

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MELINDA WILSON,
Plaintiff,

v.

AMERICAN POSTAL WORKERS
UNION, DELAWARE AREA LOCAL,
AFL-CIO; and UNITED STATES POSTAL
SERVICE, an independent establishment of
the Executive Branch of the government of the
United States of America,
Defendants.

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Civil Action No. 05-073 JJF

**AMENDED AND RESTATED
MOTION TO WITHDRAW AS ATTORNEY FOR APPELLANT**

Pursuant to *Local District Court Civil Rule 83.7*, the undersigned hereby moves to withdraw his appearance as attorney for the plaintiff, Melinda Wilson. In support of this Motion, it is further represented as follows:

1. At the outset of the representation, plaintiff signed a written Fee Agreement which provided, *inter alia*, that plaintiff would be responsible for the payment of out-of-pocket expenses associated with the litigation, irrespective of the outcome of the litigation.

2. Since the commencement of the litigation, plaintiff's counsel has advanced the sum of \$1,102.16 for payment of litigation expenses. Counsel has also made repeated requests to plaintiff for reimbursement of this amount and has informed plaintiff that he will seek to withdraw as counsel if her financial obligations are not met. Plaintiff has made several promises to pay these expenses during the past five months but has failed to make any payments. Plaintiff's failure to make any reimbursement amounts to grounds to withdraw under Rule 1.16(b)(5) of the *Delaware Lawyers' Rules of Professional Conduct*.

3. During the course of discovery in the case, plaintiff's counsel has been exposed to evidence which has led to the conclusion that the continuation of the action is "frivolous" in that plaintiff's counsel is unable to make a good faith argument on the merits of the plaintiff's claims. These circumstances constitute grounds to withdraw under Rule 3.1 (Comment (2)) of the *Delaware*

Lawyers' Rules of Professional Conduct. The above conclusions were also communicated to plaintiff by letter dated October 24, 2005.

4. Since the filing of the original Motion to Withdraw on December 12, 2005, counsel has represented plaintiff in Mediation, which was not successful in resolving the case. Following Mediation, both defendants have filed Motions for Summary Judgment, with supporting Briefs. Plaintiff's Answering brief is due on or before March 27, 2006.

5. In accordance with Local Rule 7.1.1, plaintiff's counsel has verbally discussed the substance of this Motion with counsel for the respective defendants and has been advised that they do not take any position with respect to the relief requested in this Motion.

/s/ Joseph M. Bernstein
JOSEPH M. BERNSTEIN (Bar #780)
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Dated: March 1, 2006

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CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2006, I electronically filed the foregoing **Amended and Restated Motion to Withdraw as Attorney for Plaintiff** with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

Dale Bowers, Esquire
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Wilmington, DE 19801
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I hereby certify that on March 1, 2006, I mailed the above document(s), to the following non-registered participants:

Peter J. Leff, Esquire
O'Donnell, Schwartz & Anderson, P.C.
1300 L Street, NW - Suite 1200
Washington, DC 20005-4126
(By First Class Mail)

Melinda Wilson
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New Castle, DE 19720
(By Certified Mail #7000 1670 0002 4938 4014)
(By First Class Mail)

/s/ Joseph M. Bernstein
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